IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2131 OF 2003

Mr. Sharad Vinayak Bhave ... Applicant.

V/s.

Mr. Manoj Tryambakrao Wankhede ... Respondents.

Mr. R.S. Apte with Mr. M.S. Lagu, for the Applicant.
Mr. Harshad Palve, for the Respondent No.1.
Mr. S.V. More, APP for the State.

CORAM : A.S. OKA, J.
DATE : 22ND AUGUST 2006

P.C. :

1. Heard Advocate appearing for the Applicant. The Applicant is the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The complaint is based on a cheque dated 30th January 1999 issued by the first Respondent in favour of the complainant. The said cheque was dishonoured and therefore, the said complaint came to be filed.

2. The case of the applicant - complainant is that first Respondent agreed to sale a flat in his favour for consideration of Rs.2,25,000/-. According to the case of the applicant, he paid a sum of Rs.1,85,000/-to the Respondent. According to the case of the applicant, the first Respondent sold the same flat to a third party prior to the execution of agreement with the Applicant. According to the case of the Applicant, the first Respondent agreed to pay a sum of Rs.4,00,500/- to the

applicant against payment of a sum of Rs.1,85,000/- which is paid by the applicant. The first Respondent issued a cheque in the sum of Rs.1,25,000/- on 30th January 1999 which was dishonoured.

3. In the impugned Judgment and Order, the learned Trial Judge has noted the admitted position that the applicant proceeded against the first Respondent in Consumer Forum by filing a complaint. The said complaint was decided on 31st March 2002. As per the directions given by the Consumer Forum, the first Respondent has paid Rs.1,85,000/- to the Applicant by way of refund and a sum of Rs.1,00,000/- as compensation. Admittedly, the applicant has received a sum of Rs.2,85,000/-.

4. The learned Counsel for the applicant submitted that the proceeding before the Consumer Forum was totally independent proceeding and once the ingredients of the offence under Section 138 of the said Act of 1881 were satisfied, the trial Court ought to have convicted the first Respondent. He submitted that the trial Court has committed clear illegality.

5. I have considered the submissions. The learned Trial Judge on the basis of admitted position that the first Respondent has now paid sum of Rs.2,85,000/- to the applicant and after considering the fact that the cheque amount was of Rs.1,25,000/- has acquitted the first

Respondent of the offence under Section 138 of the said Act of 1881. Considering the admitted position that the first Respondent has paid sum of Rs.2,85,000/- to the Applicant, it can be said that the view taken by the learned trial Judge was a possible view which could have been taken considering the material on record.

6. As the view taken by the trial Court is a possible view and considering the fact that the Applicant has already received sum of Rs.2,85,000/-, no case is made out for grant of leave. Accordingly, application is rejected.

JUDGE